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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
FIELDS, KENNETH WAYNE

ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____3____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Jan 18, 2002* _____.

2a) ☐ This action is **FINAL.**   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-9 and 16-23* _____ is/are pending in the application.

    4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-3, 7-9, and 16-22* _____ is/are rejected.

7) ☒ Claim(s) *4-6 and 23* _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

    a) ☐ All b) ☐ Some* c) ☐ None of:

       1. ☐ Certified copies of the priority documents have been received.

       2. ☐ Certified copies of the priority documents have been received in Application No. _____.

       3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    *See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

DETAILED ACTION

Specification

1.   The title of the invention is not descriptive. A new title is required that is clearly indicative

of the invention to which the claims are directed.

Claim Objections

2.   Claim 9 is objected to because of the following informalities: In claim 9, line 4, "test"

should be --tests--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3.   Claims 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

Claim 18 sets forth "when a client module contacts the experience test server, allocating

one or more network tests to the client module" and "performing the one or more network

tests..." Thus, claim 18 sets forth that when a client module contacts an experience test server, a

test is allocated to the client module and subsequently performed by the client module.

Claims 19-22, however, appear to conflict with the language of claim 18. Claim 19 sets

forth "distributing tests over time." As explained above, however, claim 18 sets forth distributing

the tests to the client when the client connects to the server. As claim 19 distributes tests over

time, it appears to conflict with the tests distributed when the client contacts the test server, as set

forth in claim 18.

Claim 20 sets forth "checking test quota limits before instructing the client to run a test."

Claim 18, however, sets forth "performing the one or more network tests..." Thus, the language

in claim 20 is inconsistent with the language in claim 18 because claim 20 appends a conditional

statement which insinuates that the test may not be performed by the client if a quota has been

met. Claim 18, however, sets forth "performing the one or more network tests" and thus the

language of claim 20 is inconsistent with the language of claim 18.

Claim 21 sets forth "dynamically controlling a rate of test allocation to distribution tests

over a test period..." Claim 18 sets forth distributing a test to a client module when the client

module connects to the server. Thus, the language in claim 21 appears to be inconsistent with the

language of claim 18 because claim 21 sets forth that the tests are allocated over a test period,

rather than when a client connects to the server.

Claim 22 sets forth "dynamically changing test allocation..." As claim 18 sets forth

allocating tests to client modules when the client modules connect to the server, the language in

claim 22 appears to be inconsistent with the language in claim 18.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United
> States before the invention thereof by the applicant for patent, or on an international application by another who
> has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention
> thereof by the applicant for patent.

5.   Claim 18 is rejected under 35 U.S.C. 102(e) as being anticipated by Bisdikian et al (US

6,205,413).

       As set forth in claim 18, discloses a method of monitoring network-based services,

comprising the steps of: configuring client modules (client subscriber) to contact an experience

test server; when a client module contacts the experience test server, allocating one or more

network tests to the client module from the experience test server (col. 3, lines 37-62; col. 4, line

46 - col. 5, line 63); performing thee one or more network tests using the client module and

providing the test results to the experience test server from the client module (col. 3, lines 24-62;

col. 4, line 46 - col. 5, line 63).

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

7.   Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisdikian et

al (US 6,205,413).

Regarding claims 19-22, Bisdikian discloses allocating tests to client modules when the

client module connects to the server (col. 3, lines 24-50) but does not disclose allocating tests to

clients over time, checking test quota limits, allocating tests over a time period based on a test

rate, or dynamically changing test allocation. In the network management field, it is well known

to allocate tests to clients over time, checking quota limits, allocating tests based on a test rate

and changing test allocation. It would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify the system of Bisdikian to allocate tests to clients over

time, checking test quota limits, allocating tests over a time period based on a test rate, or

dynamically changing test allocation, thereby providing the network manager with a flexible

system which enables him to customize the tests allocated to the network clients.

8.   Claims 1-3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Bisdikian et al (US 6,205,413) in view of Tams et al (US 6,327,620).

As set forth in claim 1, Bisdikian et al discloses a network performance monitoring system

comprising a plurality of user modules (virtual subscriber), wherein each user module operates on

a unique user machine coupled to one or more provider servers (col. 3, lines 24-62; col. 4, line 46

- col. 5, line 63); an experience test server for collecting data from the plurality of user modules,

wherein the collected data includes at least one performance datum relating to user experience

with a link from the user machine to the provider server (col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63).

Regarding claim 1, Bisdikian does not disclose cleansing the data collected from the user modules. However, Tams et al discloses a system for collecting data from remote devices, wherein the collected data is cleansed to account for variations of the device (col. 13, lines 19-62). One of ordinary skill in the art at the time the invention was made would have been motivated to provide the data collection system of Bisdikian with the ability to cleanse the data to account for differences in the data as disclosed by Tams. The rationale is as follows: one of ordinary skill in the art would have been motivated to cleanse the collected data of Bisdikian in order to have the data in a common format, thereby making it easier to compare the collected data of the multiple devices.

As set forth in claim 2, Bisdikian discloses that the user machines are coupled to the Internet but is silent regarding a dial-up connection. However, one of ordinary skill in the art would recognize that dial-up connections could be used to connect the multiple user machines to the service providers as is well known in the art.

As set forth in claim 3, Bisdikian discloses a service level report generator, wherein a service level report generated by the service level report generator is a report indicating the level of service provided to the user and the level of service is based on the collected data (col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63).

As set forth in claim 7, Bisdikian discloses a system wherein the experience test server comprises logic to allocate tests among the plurality of user modules (col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63).

As set forth in claim 8, Bisdikian discloses allocating tests without requiring prior knowledge of the number of user modules available for running tests (col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63).

As set forth in claim 9, Bisdikian discloses allocating test based on one or more criterion, wherein the one or more criterion is a test type (col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63).

9.   Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisdikian et al (US 6,205,413) in view of Fletcher et al (US 6,321,264).

As set forth in claim 16, Bisdikian discloses a method of monitoring end-user experience of a plurality of users operating a plurality of interfaces to a distributed network, wherein each of the plurality of users is associated with an account on the network, the method comprising: detecting when a user invokes connection code (when a user has a virtual subscriber coexisting on the user's computer system and proceeds to connect to the service provider) to connect to a distributed network (col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63); when the user invokes the connection code (when a user has a virtual subscriber coexisting on the user's computer system and proceeds to connect to the service provider), monitoring the connection code to obtain user

experience data about the connection process, wherein the user experience data is data relating to

the user's experience with the network (col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63);

transmitting the data obtained from the connection process to an experience test server (col. 3,

lines 24-62; col. 4, line 46 - col. 5, line 63).

Regarding claim 16, Bisdikian does not disclose determining compliance with a service

level agreement based upon the collected data. However, Fletcher discloses a network

monitoring system which collects data and allows the network manager to determine whether the

collected data satisfies the provisions of a service level agreement (col. 4, lines 50-59). It would

have been obvious to one of ordinary skill in the art at the time the invention was made to provide

the monitoring system of Bisdikian with the ability to determine whether the collected data

satisfied the provisions of a service level agreement as disclosed by Fletcher. The rationale is as

follows: as service level agreements are often agreed upon for quality critical information services,

it would have been obvious to one of ordinary skill in the art at the time the invention was made

to provide the data collection system of Bisdikian with the ability to identify whether the collected

data complied with a service level agreement, thereby enabling the system to identify when the

quality of service is below an acceptable level so that actions may be taken to correct the

degradation of service and restore the connection to a level within the service agreement.

As set forth in claim 17, Bisdikian discloses the monitoring done as a background process

(col. 3, lines 24-62; col. 4, line 46 - col. 5, line 63).

Allowable Subject Matter

10.   Claims 4-6 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
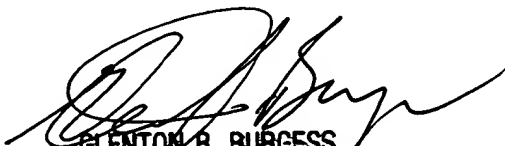
Conclusion

11.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rosborough et al (US 6,308,211), Schwaller et al (US 5,937,165), Wookey (US 6,085,244), Barrick, Jr et al (US 6,006,260), Solymar et al (US 6,244,758) and Davis et al (US 5,796,952) disclose data collection systems.

12.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Fields whose telephone number is (703) 308-4954. The fax phone number for this art unit is (703) 305-7201. Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the technology center receptionist whose telephone number is (703) 305-3900.

Kenneth Fields
April 19, 2002

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